

# SERVICES ACQUISITION REFORM ACT OF 2003 A STATUS REPORT

Alan Chvotkin

Senior Vice President and  
Counsel

Professional Services Council

DEFENSE ACQUISITION  
EXCELLENCE COUNCIL MEETING

April 13, 2004

# SARA

- Enacted as title 14 of the Fiscal Year 2004 National Defense Authorization Act
- May be cited as the “Services Acquisition Reform Act of 2003”
- Signed November 14, 2003 (P.L. 108-136)

# SARA

## **Section 1412. Acquisition Workforce Training Fund**

- There is established within the General Services Administration an acquisition workforce training fund to be managed by the Federal Acquisition Institute. The fund would be financed by depositing quarterly to the fund five percent of the fees collected by various executive agencies under certain government-wide contracts. The fund may only be used for acquisition workforce training for civilian agencies; the provision does not apply to DoD and DoD would be exempt from making contributions to the workforce training fund. This authority is sunset five years after enactment.

# SARA

## **Section 1423. Statutory and Regulatory Review**

- Within 90 days after enactment, the OFPP Administrator shall establish an advisory panel of at least nine recognized experts in acquisition law and government contracting to review laws and regulations regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility and the use of government-wide contracts. The panel shall review all federal acquisition laws and regulations and, to the extent practicable, government-wide acquisition policies, to ensure effective and appropriate use of commercial practices and performance-based contracting and other matters. The Panel shall submit its report one year after establishment.

# SARA

## **Section 1427. Improvements in Contracting for Architectural and Engineering Services**

- The threshold for the application of the participation incentive for small business concerns in acquisitions for architect and engineering services is increased from \$85,000 to \$300,000. In addition, architect and engineering services offered under multiple-award schedules contracts or multiple award task and delivery order contracts shall be performed under the direct supervision of a licensed architect or engineer in the jurisdiction in which the services are to be performed and are awarded, according to the selection procedures in the Brooks A&E Act.

# FAR/DFARS RULES

- 2004-001 Acquisition of A/E Services
- Implements 1427(b) restricting acquisition of A/E services through multiple-award contracts entered into by GSA or government-wide task and delivery order contracts
- FAR draft coverage complete (2/24/04)
- DFARS 2003-D105 increasing A/E threshold for small business set-aside increased from \$85K to \$300K. DAR Council drafting DFARS rule (3/30)

# SARA

- **Section 1431. Additional Incentive for Use of Performance-Based Contracting for Services**
- On a government-wide basis, performance-based contracts for services, or a performance-based task order for services, may be treated as a contract for the procurement of a commercial item if the contract or task order (1) does not exceed \$25 million, (2) sets forth specifically each task to be performed in measurable, mission-related terms, identifies the specific end products or outputs to be achieved, and contains firm fixed prices for tasks; and (3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government. The authority of this section shall expire ten years after enactment. In addition, the OFPP Administrator shall establish a “center of excellence in contracting for services” to assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

# FAR RULES

- 2004-004: Sec. 1431 and 1433.  
Incentives for use of performance-based contracting for services
- Interim rule to FAR Secretariat (2/20/04)

# DFARS RULE

- 2003-D111 Use of FAR Part 12 for Performance-based Contracts (Repeal)
- Section 1431 requires FAR implementation and repeals Section 821(b) of FY 2001 Authorization Act (P.L. 106-398) that expired on 10/30/03.
- DAR Council drafting interim DFARS rule (3/20)

# SARA

## **Section 1432. Authorization of Additional Commercial Contract Types**

- The Federal Acquisition Regulations shall include authority for time and materials contracts or labor-hours contracts to be used for the acquisition of commercial services commonly sold to the general public through such contracts. These additional contract types may only be used for commercial services in support of a commercial item or for any other category designated by the OFPP Administrator on the basis that (1) the commercial service is commonly sold to the general public through such contract types; and (2) it would be in the best interest of the government to authorize the use of such contract types for purchases of the commercial services in such category. For each procurement, the contracting officer must (1) execute a determination and finding that no other contract type is suitable; (2) include in the contract a ceiling price that the contractor exceeds at its own risk; and (3) authorizes subsequent change in the ceiling price only upon a determination that it is in the best interest of the government to change such ceiling price.

# FAR RULES

- 2003-027 Additional commercial contract types
- Implements Section 1432 to permit use of T&M contract or labor-hour for the procurement of certain commercial services
- Draft interim rule in coordination (3/17)

# SARA

## **Section 1433. Clarification of Commercial Services Definition**

- The criteria applied to a commercial service purchased under the procedures for the purchase of a commercial item under the definition in the OFPP Act is expanded to add “specific outcomes to be achieved” in addition to “services to be performed.”

# SARA

## **Section 1441. Authority to Enter into Certain Transactions for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack**

- An executive agency engaged in a basic, applied or advanced research and development project that has the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack may exercise the same authority as the Secretary of Defense may exercise under 10 U.S.C. 2371 (except (b) and (f) of such section). An executive agency may carry out prototype projects in accordance with the authority of Section 845 of the FY 1994 DoD Authorization Act to facilitate defense against or recovery from terrorism or other attack, including the requirement that, to the maximum extent practicable, competitive procedures be used. The OMB Director must authorize the use of this authority. The authority to carry out transactions under this authority expires on September 30, 2008.

# SARA

## **Section 1443. Special Emergency Procurement Authority**

- The OFPP Act is amended to provide government-wide authority to use special emergency procurement authority to support a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical or radiological attack against the U.S. For such procurements, (1) the micro-purchase threshold shall be \$15,000; (2) the simplified acquisition threshold shall be \$250,000 for a contract awarded and performed, or purchases made, inside the U.S. or \$500,000 for a contract to be awarded and performed, or purchases to be made, outside the U.S.; and (3) the threshold for the simplified acquisition procedures for the acquisition of a commercial item procurement shall be \$10 million. In addition, for a procurement to which this section applies, an agency may treat a procurement for property or service as a commercial item; however, if the contract is greater than \$15 million and awarded on a sole source basis as a commercial item, the contract shall not be exempt from the cost accounting standards or the requirement for cost or pricing data.

# FAR RULE

- 2003-023 Special Emergency Procurement Authority
- Implements Sec. 1443 that provides continuing authority for acquisition in support of a contingency operation or or to facilitate defense against or recovery from terrorist attach
- Interim FAR rule published 2/23/04 (69 FR 8312); public comment ends 4/23/04